

United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FIL	ING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,441	06/26/2001		Guy Tabacchi	S.5373 US	9635
466	7590	01/09/2006		EXAMINER	
YOUNG &	THOMPS	SON	WEBMAN, EDWARD J		
745 SOUTH	23RD STR	REET			
2ND FLOOR			ART UNIT	PAPER NUMBER	
ARLINGTON VA 22202				1616	

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

		A south a south					
	Application No.	Applicant(s)					
	09/888,441	TABACCHI ET AL.					
Office Action Summary	Examiner	Art Unit					
	Edward J. Webman	1616					
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply							
A SHORTENED STATUTORY PERIOD FOR REPLY WHICHEVER IS LONGER, FROM THE MAILING DA - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period w - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tirn will apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	 I. hely filed the mailing date of this communication. D (35 U.S.C. § 133). 					
Status							
1) Responsive to communication(s) filed on 16 Au	ugust 2004.						
,							
•	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is						
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.							
Disposition of Claims							
4) Claim(s) <u>1-35</u> is/are pending in the application.							
4a) Of the above claim(s) <u>5-9,12,14,20-25,27,28 and 33-35</u> is/are withdrawn from consideration.							
5) Claim(s) is/are allowed.							
6)⊠ Claim(s) <u>1-4,10,11,13,15-19,26 and 29-32</u> is/are rejected.							
7) Claim(s) is/are objected to.							
8) Claim(s) are subject to restriction and/or election requirement.							
Application Papers							
9)☐ The specification is objected to by the Examine	r.						
10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.							
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).							
11)☐ The oath or declaration is objected to by the Ex	aminer. Note the attached Office	Action or form PTO-152.					
Priority under 35 U.S.C. § 119							
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of:							
1. Certified copies of the priority documents have been received.							
2. Certified copies of the priority documents have been received in Application No							
3. Copies of the certified copies of the priority documents have been received in this National Stage							
application from the International Bureau (PCT Rule 17.2(a)).							
* See the attached detailed Office action for a list of the certified copies not received.							
Attachment(s)	, -	(DTO 442)					
Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-948)	4)						
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 8/16/04.		ratent Application (PTO-152)					

Application/Control Number: 09/888,441

Art Unit: 1616

The action filed 5/20/04 inadvertently indicated that claims 33-35 had been examined. The action should have indicated that these claims remain withdrawn as directed to nonelected inventions. Claim 14 is deemed directed to non-elected oil-inwater emulsifiers because the recited emulsifiers are described as such in the specification on page 5 lines 5-16. That is, these emulsifiers are mischaracterized in the water-in-oil emulsifiers in the claim.

The election of species requirement over water-in-oil emulsifiers is withdrawn.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-4, 10, 11, 13, 15-19, 26, 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO/99/36445 (equivalent in English-US 6,197,287) in view of FR 97-04876 (English equivalent US 6,353.,034).

US '287 teaches a composition with cosmetic applications comprising an oil phase, an aqueous phase, a water-in-oil emulsifier, an oil-in-water emulsifier, and 20-45% of a branched or crosslinked anionic polyelectrolyte comprising a strongly acidic monomer and a weakly acidic monomer (abstract). A copolymer of AMPS and acrylic acid crosslinked with methylenebisacrylamide is disclosed (Example 1 column 5). The water-in-oil emulsifier sorbitan oleate is specified (Example 1 column 5). Octyl palmitate is disclosed (column 7 lines 55-58, Example 15, column 12). 25-40% water-in-oil

Art Unit: 1616

emulsifiers and 75-60% oil-in-water emulsifiers are specified (column 3 lines 17-24). 15-40% oil phase is disclosed (column 3 lines 25-28). Chain-limiting agents are specified (column 3 lines 50-54).

US '034 teaches compositions comprising alkyl polyglycosides as emulsifiers (abstract). Emulsions with remarkable textural properties for use in the cosmetic sector are disclosed (column 3 lines 16-19). An oil phase of fatty acid esters is specified (column 5 lines 29-35). Synthetic polymer stabilizers, including crosslinked acrylic polymers, are disclosed (column 7 lines 1-16).

It would have been obvious to one of ordinary skill to add an alky polyglycoside to the composition of US '287 to achieve the beneficial effect of achieveing remarkable textural properties in view of US '034.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4, 10, 11, 13, 15-19, 26, 29-32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,197,287. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims encompass the scope of the instant claims with regard to the solvent of the oil phase.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is 571-272-0633. The examiner can normally be reached on M-F from 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan, can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EDWARØ J. WEBMAN PRIMARY EXAMINER